

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 2468.

(Given pursuant to section 4 of the Food and Drugs Act.)

U. S. v. Hudson Manufacturing Co. Tried to a jury. Verdict guilty. Fine, \$50 and costs.

ADULTERATION AND MISBRANDING OF VANILLA EXTRACT.

On December 7, 1910, the United States Attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information, and on February 20, 1913, an amended information, against the Hudson Manufacturing Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on or about June 6, 1910, from the State of Illinois into the State of Texas, of a quantity of so-called vanilla extract which was adulterated and misbranded. The product was labeled: "Prime Vanilla Extract, made from the extractive matter of prime vanilla beans, sweetened with cane sugar, aged in wood, made by the Hudson Mfg. Co., Chicago, U. S. A."

Analysis of a sample of the product by the Bureau of Chemistry of this Department showed the following results: Vanillin, 0.52 per cent; coumarin, slight trace, if any; resins, trace; color, caramel. Adulteration of the product was alleged in the information for the reason that an imitation of vanilla extract containing vanillin and artificial coloring matter in solution had been mixed with the product so as to reduce, lower, and injuriously affect its quality and strength, and further for the reason that an imitation of vanilla extract containing vanillin and artificial coloring matter in solution had been substituted in part for the product, and further for the reason that the product was artificially colored in a manner whereby inferiority was concealed, in that the artificial coloring matter aforesaid gave to the imitation vanilla extract the color of genuine vanilla extract. Misbranding was alleged for the reason that the product was an imitation of another article of food, to wit, pure vanilla extract, in that said product contained vanillin and alcohol artificially colored, and for the further reason that said product was offered for sale under the distinctive name of another article of food, to wit, pure

vanilla extract. Misbranding was alleged for the further reason that the product was labeled as set forth above, which said statement in the label was false and misleading, in that it represented to the purchaser that the product was a genuine vanilla extract conforming to the commercial standard for such an article of food, to wit, a flavoring extract prepared from vanilla bean with or without sugar or glycerin and containing in 100 cc the soluble matters from not less than 10 grams of the vanilla bean, whereas, in truth and in fact, it contained not to exceed 2 grams of the vanilla bean in 100 cc thereof.

On February 21, 1913, the case having come on for trial before the court and a jury, after the submission of evidence and argument by counsel, the following charge was delivered to the jury by the court (A. B. Anderson, *J.*):

GENTLEMEN OF THE JURY: This is a criminal case, and you are the judges of the weight of the evidence and the credibility of the witnesses. You are the exclusive judges of all the facts. You are bound by the law as given to you by the court.

The defendant is presumed to be innocent until it is proved guilty by the government's evidence beyond all reasonable doubt. Reasonable doubt, as I said yesterday, is just what the word "reasonable" means, which is as the term implies, a *reasonable* doubt. It is not a captious or capricious doubt. It is not a doubt suggested by the ingenuity of counsel or by your own ingenuity, but it is as the term implies, a reasonable doubt, which is engendered by the evidence or the want of evidence. You, as reasonable men, understand what that means. You are the judges, as I said, of the weight of the evidence and the credibility of the witnesses. In determining what weight you shall give to any testimony of any witness, you have a right to take his knowledge, or want of knowledge, into consideration, about the thing about which he testifies—his appearance and manner and bearing on the stand, and particularly his interest, or want of interest, in the result of the suit. These are the general principles by which you are to determine questions of this kind.

Now, gentlemen, there is just one question for you to determine—one question of fact, and that is, whether or not the government has established, according to the standards that the evidence has disclosed to you, that there was added vanillin to this product which was branded as the testimony shows. Now, that this barrel, or half barrel, of stuff that was sent to Texas contained more vanillin than is ordinarily contained in a pure extract of vanilla, there is no dispute; the witnesses on both sides agree as to that. The question is whether or not it was added in the form of vanillin—what is called the synthetic product or artificial product—as is claimed by the government, or whether or not this increased vanillin was due to the use of two and a half times, practically, of the amount of vanilla beans which is ordinarily used in the production of the extract of vanilla. That is the question for you to decide. Now it may be that this vanillin was there by reason of either one of these two theories. Either the manufacturer, the defendant here, manufactured this from the ordinary amount of vanilla beans, or less; that is to say, one pound, or thirteen ounces I believe it is, to about a gallon of the dissolved fluid which is partly alcohol and partly water, and the added amount of vanillin that was in this product was put in there, as it is averred in the information, by the defendant—and in which case the article was adulterated within the law and misbranded within the law—or it was manufactured as claimed by the defendant, that is to say, it was made by using two and a half times as much vanilla beans as is ordinarily used, or is necessary to be used, or it is proper to be used, under the standards which have been testified to here.

Now gentlemen of the jury, you are practical men, and when you go into the jury box you do not lose or set aside your practical knowledge of affairs, nor you are not to lose sight of the motives which ordinarily influence men in their acts, and when you come to decide which way this thing was it is for you to determine which way it happened. You will take into consideration the fact, as shown by the evidence, that this was a commercial article. It was manufactured for the market and sold in the market. And, of course, you know that one of the principal facts or circumstances surrounding the manufacture of an article is the cost of it. If, as appears in evidence, this is manufactured as claimed by the defendant, it cost two and a half times as much to make it as if it were made according to the standards which have been testified to here. On the other hand, if it was made as claimed by the government, it was made much cheaper than the standards testified to here. You will take those things into consideration.

It has been said here that the witnesses for the government, the expert chemists, admitted that they did not know and could not tell whether or not it is artificial vanillin added, "how can you tell if they can't tell." That is the very thing you are here for. These witnesses spoke as chemists. They stated it as chemists. They could only state it was there; that they found it; that they could not say from the fact it was there how it got there. But you are to take the facts that are there, coupled with the explanation on both sides as to how it might have got there, and determine yourself what the actual fact is.

If you find that this extract was made by adding what is called here artificial vanillin, then your verdict should be guilty; We, the jury, find the defendant guilty as charged. If you find the facts to be that this was made by using two and a half the amount of vanilla beans ordinarily used or is used in making this standard vanilla extract, notwithstanding the fact that it cost two and a half times as much—if you find that is the way it was done, then your verdict should be, We, the jury, find the defendant not guilty. In either event your verdict should be signed by the foreman and returned into court.

Thereupon the jury retired and after due deliberation returned a verdict of guilty and the court imposed a fine of \$50 and costs.

B. T. GALLOWAY,
Acting Secretary of Agriculture.

WASHINGTON, D. C., *April 12, 1913.*